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Jack Cooper Transport Co., Inc. and General Drivers, Warehousemen and Helpers, Local Union 89, a/w International Brotherhood of Teamsters.
Case 26-CA-19350

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On May 8, 2002, Administrative Law Judge Keltner W. Locke issued the attached bench decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.¹

The judge found that the Respondent violated Section 8(a)(5) and (1) by refusing to supply information requested by Local 89. He based his finding on Local 89's shared interest with the other local unions covered by a multiemployer bargaining agreement in making sure that the employers covered by the agreement followed its terms. We affirm the judge's finding of the 8(a)(5) and (1) violations, but only for the reasons set forth below.

The Respondent is a member of a multiemployer committee called the National Automobile Transporters Labor Division Negotiating Committee. Local 89, and numerous other local unions make up the Teamsters National Transporters Industry Negotiating Committee. Through these two committees, the Respondent and Local 89 are among the signatories/parties to a collective-bargaining agreement. The most recent agreement was effective from June 1, 1999, to May 31, 2003.

On August 4, 1999, the Respondent's president, Rudy Cleveland, told Frederick Zuckerman, then assistant to the president, and now president, of Local 89, that the Respondent had a "competitive agreement" that allowed it to use its Dallas/Forth Worth, Texas drivers to transport Corvettes from the General Motors plant in Bowling

Green, Kentucky.² Cleveland's statement led Zuckerman, who was not aware that the Union had authorized a competitive agreement, to suspect that the Respondent was operating under a defunct competitive agreement.³ Therefore, on August 6, Zuckerman sent a letter to the Respondent notifying it of a grievance concerning the matter and making an information request for, inter alia, copies of any competitive agreement that the Respondent had entered into that affected movement of traffic from Bowling Green, Kentucky. The Respondent refused to supply the requested information.

In agreeing with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to supply the requested information, we rely solely on the specific evidence establishing that Local 89 had reason to believe that the Respondent was operating within Local 89's jurisdiction on a "defunct" competitive agreement and in a manner that directly affected the employees represented by Local 89. (As noted, a competitive agreement would enable the Respondent to undercut what Local 89 members were paid for hauling cars from General Motors.) In these circumstances, the requested information was relevant and necessary to Local 89's interest in policing the Respondent's compliance with the terms of the collective-bargaining agreement. *Crowley Marine Services*, 329 NLRB 1054, 1060 (1999), enf'd. 234 F.3d 1295 (D.C. Cir. 2000).⁴ Accordingly, the Respondent had an obligation to supply the requested information and its refusal to do so violated Section 8(a)(5) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Jack

² Cleveland's remark to Zuckerman occurred when the two men were serving on a committee hearing a grievance that did not involve either the Respondent or Local 89.

³ Local 89's jurisdiction encompasses the Bowling Green, Kentucky area, and it represents drivers who also haul cars from the same General Motors plant.

Competitive agreements, authorized by art. 22 of the collective-bargaining agreement, allow an employer to pay its drivers based in another area less than the standard wage rate that the local unionized drivers would receive. In this case, under a competitive agreement, the Respondent could pay its drivers from Dallas/Forth Worth less than the standard rate that the members of Local 89 would receive in Bowling Green, Kentucky, for hauling vehicles from the General Motors plant. In order to utilize the competitive agreement clause for this purpose, the employer would have to receive permission from the local union in the area. Further, if the competitive agreement was not used within a certain time, it became void or "defunct."

⁴ See also *Daimler Chrysler Corp.*, 331 NLRB 1324 (2000), enf'd. 288 F.3d 434 (D.C. Cir. 2002) (employer's duty to bargain includes, inter alia, providing information that a union needs for the processing of grievance and the investigation of potential grievances).

¹ We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

Cooper Transport Co., Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraphs 2(b) and (c):

“(b) Within 14 days after service by the Region, post at its office and place of business in Kansas City, Missouri copies of the attached notice marked “Appendix B.”³ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 6, 1999.

“(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.”

Dated, Washington, D.C. September 30, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Michael W. Jeannette, Esq., for the General Counsel.

Loyd E. Owen Jr., Esq. (Lathrop & Gage, P.C.), of Kansas City, Missouri, for the Respondent.

James F. Wallington, Esq. (Baptiste & Wilder, P.C.), of Washington, D.C., for the Charging Party.

BENCH DECISION AND CERTIFICATION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. I heard this case on April 8, 2002, in Nashville, Tennessee. After the parties rested, I heard oral argument, and on April 10, 2002, issued a bench decision pursuant to Section 102.35(a)(1) of the Board’s Rules and Regulations, setting forth findings of fact

and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach as “Appendix A,” the portion of the transcript containing this decision.¹ The conclusions of law, remedy, Order, and notice are set forth below.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, including posting the notice to employees attached as “Appendix B.”

Respondent must provide the Charging Party with the information sought in its August 6, 1999 request. Contrary to Respondent’s argument at hearing, I conclude that such a remedy is not unduly burdensome.

Respondent asserts that it should be required to provide information only to the local unions which play a direct role in representing its employees, but that it has no duty to provide information to the numerous other local unions which, together with their bargaining committee, comprise the exclusive bargaining representative. Respondent argues that ordering it to provide information whenever requested by *any* of these many local unions could greatly increase its staff’s work.

This argument ignores a fundamental element which must be present to establish that an employer has a duty to provide information: The information sought must be relevant to the union’s function as collective-bargaining representative, and must be necessary to the performance of this function. In many, perhaps most cases, information in the Respondent’s possession will not be relevant to the functions of one of the “distant” local unions which are not directly involved with Respondent’s employees.

In the present case, however, the information sought concerned an arrangement, ostensibly sanctioned by the collective-bargaining agreement, which had a direct impact on the employees customarily represented by the Charging Party. Under this arrangement, when Respondent’s employees were performing certain work in Local 89’s geographical area, these workers, based in another State, would receive lower wages than local employers had to pay employees represented by Local 89.

Because this “competitive” arrangement—a dispensation from the strictures of the collective-bargaining agreement—could hurt the employees represented by Local 89, that local union had a significant interest in making sure that the dispensation was legitimate. Local 89 had an immediate need to find out, for example, whether the “competitive” arrangement really complied with all terms of the collective-bargaining agreement, and whether the arrangement remained current or had expired.

Local 89’s interest in assuring compliance with the collective-bargaining agreement—and with the procedures established pursuant to that agreement—was fully consistent with the interests of the Union as a whole. The Union, and all of its constituent local unions, shared an interest in making sure that

¹ The bench decision appears in uncorrected form at pages 208 through 226 of the transcript [omitted from publication]. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

employers followed the terms of the agreement. Implicitly, it acted with the authority of the Union when it requested that Respondent provide the information described in its August 6, 1999 letter. The information it sought clearly was relevant to determine whether the collective-bargaining agreement was being followed or ignored, and was necessary for this purpose.

The bargaining relationship in this case is unusual: Numerous local unions and their negotiating committee constitute a single "labor organization" which is the exclusive bargaining representative. This relationship may appear cumbersome to the Respondent, but Respondent agreed to it. By signing the collective-bargaining agreement, Respondent recognized the union defined in that contract, and in doing so, Respondent assumed certain legal obligations. The remedy ordered below simply requires Respondent to fulfill its obligations to the union it recognized.

CONCLUSIONS OF LAW

1. The Respondent, Jack Cooper Transport Co., Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party, General Drivers, Warehousemen and Helpers, Local Union 89, affiliated with International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

3. Local unions covered by the National Master Automobile Transporters Agreement, together with the Teamsters National Automobile Transporters Industry Negotiating Committee, constitute a labor organization within the meaning of Section 2(5) of the Act.

4. The following unit constitutes an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act: "All employees covered by the National Master Automobile Transporters Agreement."

5. Since May 22, 1995, the labor organization described in paragraph 3, above, has been and is the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the unit described in paragraph 4, above.

6. On August 6, 1999, the Charging Party, as a constituent part of the labor organization described in paragraph 3, above, requested that the Respondent provide certain information relevant to, and necessary for the Union to perform its functions as collective-bargaining representative.

7. Since August 6, 1999, Respondent has failed and refused to provide the information described above in paragraph 6.

8. By the actions described above in paragraph 7, Respondent failed and refused to bargain in good faith with the exclusive representative of certain of its employees, and thereby violated Section 8(a)(5) and (1) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On the findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended²

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the

ORDER

The Respondent, Jack Cooper Transport Co., Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the Union with requested information relevant to the Union's proper performance of its collective-bargaining duties as the exclusive representative of an appropriate unit of the Respondent's employees.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely fashion the information requested by the Union which Respondent has unlawfully refused to provide as determined in this decision.

(b) Post at its office and place of business in Kansas City, Missouri, and at all other places where notices customarily are posted, copies of the attached notice marked "Appendix B."³ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated Washington, D.C. May 8, 2002

APPENDIX A

This is a bench decision in the case of Jack Cooper Transport Co., Inc., which I will call the "Respondent," and General Drivers, Warehousemen and Helpers, Local Union 89, affiliated with International Brotherhood of Teamsters, which, I will call the "Charging Party." The case number is 26-CA-19350.

The General Counsel has alleged that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information, requested by the Union, which was relevant and necessary for the Union to perform its bargaining obligations. I find that Respondent violated the Act as alleged.

Procedural History

This case began on September 13, 1999, when the Charging Party filed its initial charge in this proceeding. The Charging Party amended this charge on October 30, 2000.

After investigation of the charge, the Regional Director of Region 26 of the National Labor Relations Board issued a

Board, and all objections to them shall be deemed waived for all purposes.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Complaint and Notice of Hearing. In issuing this complaint, the Regional Director acted on behalf of the General Counsel of the Board, whom I will refer to as the "General Counsel" or as the "government." On August 2, 2001, the Regional Director issued an Amended Complaint and Notice of Hearing, which I will call the "Complaint." Respondent filed a timely Answer.

On April 8, 2002, a hearing on the Complaint opened before me in Nashville, Tennessee. The parties presented evidence and oral argument. Additionally, counsel for the General Counsel and for Respondent filed legal memoranda, which I have considered.

Today, April 10, 2002, I am issuing this bench decision pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations.

Admitted Allegations

In its Answer, Respondent admitted certain allegations raised by the Complaint. Based on these admissions, I find that the government has proven the allegations set forth in Complaint paragraphs 1(a), 1(b), 3(a), 3(b), 4, 5(a), 5(b), and 6. Additionally, I find that the General Counsel has proven the material allegations set forth in Complaint paragraph 2.

More specifically, I find that the General Counsel has established that the Charging Party filed the charge and amended charge as alleged. Further, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that its president, Rudy Cleveland and its vice president of labor relations, Joe L. Citarello, are its supervisors and agents within the meaning of Sections 2(11) and 2(13) of the Act.

Complaint paragraph 5(a) alleges that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act. Respondent has admitted this allegation and I so find.

Complaint paragraph 5(b) alleges that all local unions party to the agreement described in Complaint paragraph 7(a) are "a labor organization" within the meaning of Section 2(5) of the Act. The use of the singular, "a labor organization," rather than the plural "labor organizations," conveys the sense that together, the various local unions constitutes a single body meeting the statutory definition. Based on the admission in Respondent's Answer, and the record as a whole, I find this to be the case.

Section 2(5) of the Act defines the term "labor organization" to mean "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Collectively, as well as individually, the local unions described in Complaint paragraph 5(b) meet that definition.

Undisputed Facts

At hearing, the parties entered into a number of stipulations and most of the relevant facts are undisputed. A number of employers, including Respondent, transport new cars from automobile assembly plants to car dealers. Some of these employers have formed a committee to negotiate collective-

bargaining agreements with a committee representing various locals of the International Brotherhood of Teamsters.

The employers' committee is called the "National Automobile Transporters Labor Division Negotiating Committee." For simplicity, I will refer to it simply as the "employers' committee."

The committee which represents the local unions is called the "Teamsters National Automobile Transporters Industry Negotiating Committee." I will call it simply the "local unions' committee." It should be noted that this committee represents only local unions. Although these local unions are all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the International Union itself is not a party to the negotiations.

The employers' committee and the local unions' committee have negotiated a number of collective-bargaining agreements binding on the employers and the local unions. The current agreement took effect June 1, 1999 and will continue in effect through May 31, 2003. Respondent entered into this collective-bargaining agreement and also was a signatory to its predecessor.

These contracts establish that Respondent delegated its bargaining rights to the employers' committee, which in turn reached agreement with the local unions' committee. However, the contracts do not reveal how the Respondent's bargaining obligation originated. Neither does any other evidence in the record. We do not know when Respondent's employees selected a union. Also, we do not know which local union these employees chose to represent them.

The record does indicate that in resolving its employees' grievances, Respondent now deals with Teamsters Local 745. Previously, it dealt with Teamsters Local 47, which became Local 745 after it merged with another local union. The record further reveals that the Charging Party, Teamsters Local 89, does not get involved in representing Respondent's employees at grievance meetings.

The Charging Party's president, Frederick Zuckerman, testified that his local does not notify the Respondent when there is a change of local union officers, because no members of his local work for Respondent. Zuckerman also testified that he could not remember any time his Local 89 received dues checkoff money from any of Respondent's employees. Based on Zuckerman's testimony and the record as a whole, I find that Local 89 plays no part in representing Respondent's employees in grievance proceedings, a function performed by Teamsters Local 745.

Further, I conclude that Respondent's relationship with the Charging Party arises solely because at some point, Respondent chose to delegate its bargaining authority to the multiemployer group represented by the employers' committee. In one sense, Respondent's relationship with the employers' committee is analogous to the Charging Party's relationship to the local unions' committee. Just as Respondent is one of the constituents represented by the employers' committee, the Charging Party is one of the constituents represented by the local unions' committee.

The two committees have agreed upon a rather intricate grievance resolution process, which is described at length in the

collective-bargaining agreement. Under this contractual procedure, representatives of various employers and representatives of various local unions form committees to hear and resolve grievances.

To avoid the possibility of bias, a particular employer representative will not sit on a committee hearing a grievance involving that employer. Similarly, a particular local union representative will not sit on a committee hearing a grievance involving that local union.

On August 4, 1999, the Respondent's president, Rudy Cleveland, and the man who would become the Charging Party's president, Frederick Zuckerman, were sitting on one of these grievance committees. Zuckerman then held the position of assistant to the local union president.

According to Zuckerman, during this meeting Respondent's president made a statement which led Zuckerman to believe that Respondent was violating the collective-bargaining agreement. This statement concerned a practice described in Article 22 of the contract, "Competitive Agreements."

Under this article, an employer may receive permission from the local union to pay its drivers less than the standard contractual wage rate. The local union would grant such permission so that the employer could remain "competitive" with nonunion trucking companies. Employers sought such dispensations when they wanted to take over transporting assignments ("traffic") previously performed by the nonunion companies.

Zuckerman testified that at this August 4, 1999 grievance meeting, Respondent's president told him that Respondent had a competitive agreement allowing it to transport cars from a plant in Bowling Green, Kentucky. Such information clearly would concern Zuckerman, whose local union represents employees in parts of Kentucky. It signified that Respondent's employees, represented by the local union in Fort Worth, Texas, were coming into Kentucky—the "turf" of Local 89—and performing work at wages lower than the rates usually paid to employees represented by Local 89.

On August 6, 1999, Zuckerman sent Respondent a letter which included both a grievance and a request for information. The letter referred to Respondent as "JCT" (Jack Cooper Transport) and to the collective-bargaining agreement as "NMATA" (National Master Automobile Transporters Agreement). It stated, in part, as follows:

Please consider this as a formal written grievance protesting JCT's violating Article 22 and 33 Sec. 5 and any other applicable Articles. Local 89 demands that JCT cease and desist immediately or be held liable for these violations. . .

Also be advised that Local 89 will pursue jurisdictional claims and this notification is consistent with Article 20 of the NMATA.

As already noted, Article 22 of the contract includes the provisions related to granting "competitive agreements" allowing an employer to pay lower wage rates under certain circumstances. Article 33, Section 5 obligates an employer to negotiate with a local union when the employer does work within the local union's territory.

Article 20 of the contract addresses the problem of "jurisdictional disputes" arising between different local unions. This provision excludes such jurisdictional disputes from the arbitration provisions of the collective-bargaining agreement. It also prohibits the parties from submitting a jurisdictional dispute to any "legal or administrative agency" for determination. Instead, it reserves the resolution of jurisdictional disputes to internal union processes.

Clearly, Article 20 limits the role of an employer in resolving a jurisdiction dispute. An employer may seek a Board or court order prohibiting a work stoppage or picketing, but otherwise, Article 20 relegates an employer to the role of bystander. Indeed, the language of Article 20 suggests that the unions do not have even an obligation to notify the employer of a jurisdictional dispute unless the dispute could create pension fund withdrawal liability for the employer. Thus, Article 20, Section (b) states, in part:

The Employer will be notified by the Local Union of the existence of any such jurisdictional dispute which may create Pension Fund withdrawal liabilities for the Employer. In those cases, the Employer shall be permitted to provide relevant information on that potential liability. . . .

In his August 6, 1999 letter to Respondent, Zuckerman also requested the following information and documents:

1. Copies of any and all competitive agreements JCT has entered into with any Terminal that affects movement of traffic from Bowling Green, Kentucky.
2. Copies of any contracts with General Motors and JCT for the movement of traffic from the Bowling Green, Ky. facility.
3. Copies of dispatch sheets, waybills, bills of lading, trip sheets, and driver pay records for all trips pulled from Bowling Green, Ky. by JCT drivers.
4. Dates JCT was awarded traffic from Bowling Green, KY.

Zuckerman sent this request to Respondent on letterhead of the "General Drivers, Warehousemen & Helpers Local Union No. 89." Below Zuckerman's signature appears the title, "Fred Zuckerman, Assistant to the President, TEAMSTERS LOCAL UNION # 89." This identification is significant because Zuckerman also is an official of the International Union. However, nothing in the letter indicates that Zuckerman was filing the grievance or making the information request on behalf of either the International Union or the local unions' committee which negotiates with the employers' committee. The letter identified Zuckerman solely as an official of the Charging Party.

The record suggests that the letter surprised Respondent's management. Local 89 did not play any role in representing Respondent's employees in the grievance process and none of Respondent's employees belonged to Local 89. Therefore, Respondent doubted that Local 89 had standing to bring a grievance on behalf of any of its employees.

Additionally, Respondent had applied for and received "competitive relief" allowing it to pay drivers lower wage rates for certain runs between Texas and Bowling Green, Kentucky. Therefore, management regarded Zuckerman's August 6, 1999

grievance as specious. In an August 27, 1999 reply to Zuckerman's letter, Respondent's vice president of labor relations stated, in part, as follows:

Attached is a copy of the decision of the Central-Southern Joint Arbitration Committee from the May 1986 meeting, in Case 650, which approved the competitive [agreement] between Arlington [Texas] and Bowling Green [Kentucky]. I am unable to find a copy of the Competitive Agreement, but when I do, I will send it to you. Given the fact that we are operating in accordance with an approved competitive, we do not feel that we have any obligation under the contract to provide you with the information outlined in Paragraphs 2,3 and 4 of your letter. Information concerning Allied's participation, whose employees you represent, should be requested from Allied.

In this letter, "Allied" referred to another company which transported automobiles from the same factory. The phrase "whose employees you represent" indicates that Respondent regarded Local 89 as the bargaining representative of Allied's unit employees, but regarded other local unions as the representatives of its own employees.

After receiving the August 27, 1999 reply, Zuckerman notified the Respondent that Local 89 intended to file a charge against Respondent with the Board. It did so on September 13, 1999.

Disputed Allegations

The Complaint alleges that Respondent breached its duty to bargain in good faith by failing to provide the information sought in Zuckerman's August 6, 1999 letter. To establish such a violation, the General Counsel must plead and prove a number of different elements. Respondent has denied these allegations.

Complaint paragraph 7(a) alleges that at all material times, Respondent was bound by the 1999-2003 National Master Automobile Transporters Agreement ("NMATA"). Respondent denies this allegation. However, it is undisputed that Respondent was signatory to this agreement. Therefore, to the extent that this agreement is consistent with the labor law, I conclude that Respondent was bound by it.

Complaint paragraph 7(b) alleges that the employees covered by the NMATA constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent denies this allegation. I will consider it later in this decision, in connection with other allegations concerning the bargaining relationship.

Complaint paragraph 8 alleges that "Since about May 22, 1995, and at all material times, Local unions covered by NMATA, including Local 89, hereinafter collectively referred to as the Union, have been the designated exclusive collective-bargaining representative of the Unit and since then the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 1999 to March 31, 2003." Respondent denies this allegation.

Respondent contends that its bargaining obligation extends to the local unions, such as Local 745, which directly represent its employees. Such local unions have delegated their bargaining authority to the local unions' committee, as have other local unions not involved with Respondent's employees. Respondent concedes that it also has an obligation to bargain with this committee, to which the local unions have delegated their authority. However, Respondent argues, other unions do not become the representative of Respondent's employees merely because they, too, have delegated their authority to the same committee. In its prehearing brief, Respondent stated, in part

The independent local unions represent the majority of employees in an appropriate unit. 29 U.S.C. Section 159(a). As such they are the *sole* and *exclusive* representative of those employees. *Id.* Participating in multiemployer/multiunion negotiation does not alter that relationship. The independent local unions have only delegated to their representative the power to negotiate the terms of the contract. *Davey v. Fitzsimmons*, 413 F.Supp 670 (DDC 1976); *Rice Lake Creamery Co.*, 131 NLRB 1270 (1961). These independent locals continue to be independent labor organizations and represent their members in all facets of their employment. Nothing in the agreement or authorizations given to TNATINC [the local unions' committee] grants it the right to delegate to other independent local unions the right to negotiate or represent other independent local unions. Additionally, it would be an unfair labor practice for Jack Cooper to recognize Local 89 as the representative of its employees when the employees already have a sole and exclusive labor organization to represent them. *See NLRB v. Autodie International, Inc.* 169 F.3d 378 (6th Cir. 1999); *Citywide Service Corp.*, 317 NLRB 861 (1995). [Emphasis in original.]

The best evidence concerning the union which Respondent recognized comes from the collective-bargaining agreement which Respondent signed. A recognition clause appears in Article 3, Section 1 of this contract, and states as follows:

The Employer recognizes and acknowledges that the Teamsters National Automobile Transporters Industry Negotiating Committee and the Local Unions affiliated with the International Brotherhood of Teamsters are the exclusive representatives of all employees in the classifications of work covered by this National Master Agreement, and Supplements thereto for the purpose of collective bargaining as provided by the National Labor Relations Act.

This recognition clause differs somewhat from the description in Complaint paragraph 8, which identified the exclusive bargaining representative as "Local unions covered by NMATA, including Local 89," but made no mention of the local unions' committee. In accordance with the language in the collective-bargaining agreement, I find that Respondent recognized, as the exclusive bargaining representative of its employees, the Teamsters National Automobile Transporters Industry Negotiating Committee and the Local unions.

Returning to the issue raised in Complaint paragraph 7(b), I must determine whether this unit is an appropriate one within

the meaning of Section 9(b) of the Act. A bargaining unit established on a multiemployer basis is consensual, created by the agreement of the parties. It requires the unequivocal manifestation by each member of the group that all be bound in collective bargaining by the group, rather than as individuals. See, e.g., *Kroger Co.*, 148 NLRB 569 (1964).

By entering into the collective-bargaining agreement, Respondent agreed to the unit described in Article 3, Section 1 of that agreement. It now seeks to challenge, belatedly, the unit to which it previously gave consent.

Respondent has advanced an interpretation of the unit description which is inconsistent with the words in that description. Respondent contends in its brief that "Nothing in the agreement or authorizations given to TNATINC [the local unions' committee] grants it the right to delegate to other independent local unions the right to negotiate or represent other independent local unions."

The problem with this argument resides in the word "independent." The contractual recognition clause makes clear that the local unions are not independent. Rather, they are grouped together, along with the local unions' committee, to constitute one bargaining representative.

The agreement reserves to the local unions the power to negotiate with individual employers concerning local matters. Article 2, Section 5 of the Agreement defines "local matters" to be those peculiar to the operations of an employer and not of general application to the industry. A local union and an employer can negotiate a rider to the national agreement to cover such local matters.

The fact that local unions can bargain regarding local matters does not detract from the fact that all of the unions together, along with the bargaining committee, comprise the exclusive bargaining representative. Although the collective-bargaining agreement creates a kind of federal system, it leaves no doubt about the supremacy of the entity as a whole. For example, Article 2, Section 4 of the agreement defines the bargaining unit as follows:

The employees, Unions, Employers and Association, covered by this National Master Agreement and the various Supplements thereto, shall constitute one (1) bargaining unit. It is understood that the printing of this National Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only and is not intended to create separate bargaining units and contracts.

Respondent criticizes this language, arguing that only employees, and not employers, can be in bargaining units. However, I do not interpret this language to be an attempt to describe a bargaining unit as the Labor Board uses that term in administering Section 9 of the Act. Rather, the language clearly is intended to refute any argument, such as the one advanced by Respondent here, that each local union is the representative of a bargaining unit consisting of the employees of a particular employer.

Moreover, to the extent that it is necessary to construe this language, clearly the Board may interpret it in a manner which give it meaning, rather than in a way which renders it meaning-

less. See, e.g., *Kroger Co.*, 219 NLRB 388 (1975); *Raley's*, 336 NLRB No. 30 [374] (September 28, 2001).

In these circumstances, I conclude that the Respondent is bound to recognize the unit to which it agreed when it entered into the collective-bargaining agreement. By the terms of that contract, Local 89 was just as much a part of the exclusive bargaining representative as any other part, and had the right to request information from the Respondent. Likewise, Respondent had the duty to provide that information if it was relevant and necessary to the Union in administering the contract.

In deciding whether the information was relevant and necessary, I look to how Local 89 could use this information. It is true that under Article 20, Local 89 could not submit its jurisdictional dispute with Local 745 to arbitration. However, the contract did not prohibit Local 89 from using this information at other steps of the grievance procedure, and likewise did not preclude Local 89 from using it in negotiations.

Moreover, I note that when the Respondent sought and obtained "competitive agreement" authority allowing it to pay lower wages to its employees on this particular run, Local 89 was part of that process. The application for such authority identified it specifically as an interested party.

In these circumstances I conclude that the information requested was relevant and necessary to Local 89 in performing its functions as a bargaining representative, and that Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide it.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, Remedy, Order and Notice. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

During the hearing, counsel impressed me greatly with both their skill as advocates and with their great civility. I truly appreciate the professionalism which all counsel demonstrated throughout this proceeding.

The hearing is closed.

Hearing Closed: April 10, 2002 at 2:29 pm

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of these rights, guaranteed to them by Section 7 of the Act.

WE WILL NOT refuse to provide the union representing our employees under the National Master Automobile Transporters Agreement with relevant information requested by the union which is necessary for the union to perform its function as exclusive bargaining representative.

WE WILL provide to General Drivers, Warehousemen and Helpers, Local Union 89, affiliated with International Brotherhood of Teamsters, the information it requested on May 6, 1999.

JACK COOPER TRANSPORT CO., INC.